

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Civil Action No. 05-11395-RCL

PATRICIA BERGEVINE,
Plaintiff,

v.

PEASE & CURREN, INC, PEASE & CURREN
MATERIALS, INC., FRANCIS H. CURREN, JR.,
ROBERT H. PEASE, JR., FRANCIS H. CURREN,
III A/K/A KIP CURREN AND MEREDITH A.
CURREN,

Defendants.

JOINT PROPOSED SCHEDULING ORDER

DATE OF CONFERENCE AND APPEARANCES OF COUNSEL

A Scheduling Conference is scheduled to be held on December 1, 2005 at 2:30 p.m. before Judge Reginald C. Lindsay. Gregory J. Aceto, Johnson & Aceto, P.C., 67 Batterymarch Street, Suite 400, Boston, Massachusetts 02110; Telephone (617) 728-0888, will appear on behalf of Plaintiff Patricia Bergevine. Joseph Aronson of The McCormack Firm, LLC, One International Place, Boston, Massachusetts 02110; Telephone (617) 951-2929, and Bruce Gladstone of Cameron & Mittleman, 56 Exchange Terrace, Providence, RI; Telephone (401) 331-5700, will appear on behalf of defendants.

1. SUMMARY OF POSITION ASSERTED BY THE PLAINTIFF

Plaintiff Patricia Bergevine (“Bergevine”) is asserting claims for breach of contract, fraud, violations of the Racketeer Influence and Corrupt Organization Act (RICO), 18 U.S.C. §§ 1962(a)-(d), negligence, negligent misrepresentation, negligent infliction of emotional distress, and intentional infliction of emotional distress arising from the Defendants Pease & Curren, Inc., Pease & Curren Materials, Inc., Francis H. Curren, Jr., Robert H. Pease, Jr., Francis H. Curren, III a/k/a Kip Curren and Meredith A. Curren’s (hereinafter the “Defendants”) fraudulent business practices committed during the Plaintiff Patricia Bergevine’s (hereinafter the “Plaintiff”) association and employment with the Defendants.

The Plaintiff’s assertions are based on her experiences while working as an independent contractor, and later as an employee, of the Defendants as a Dental Account Representative. The Plaintiff alleges that she discovered that the Defendants were systematically lowering the reported weights and percentage of metals recovered on the accounts the Plaintiff worked on in order to defraud their clients, employees and the Plaintiff. The Plaintiff further alleges that by lowering the amount of weight or percentage of each metal recovered, the Defendants paid less money to the clients and fewer commissions to the Plaintiff, and concealed the actual value of the lots assayed and recovered.

The Plaintiff reported the fraud to the Federal Bureau of Investigation and the Rhode Island State Police Financial Crimes Unit (“RISPFCU”) and left the employ of the Defendants shortly thereafter. Plaintiff’s Counsel has confirmed that an investigation by the RISPFCU is ongoing. The Plaintiff is demanding One Hundred Fifty Thousand Dollars (\$150,000.00) or the amount that was withheld from her commissions as a result of the Defendants’ fraud.

2. SUMMARY OF POSITION ASSERTED BY DEFENDANTS

Defendants deny plaintiff's claims. Plaintiff alleges that defendants falsely undercalculated the weights and percentage of metals recovered on the accounts that she worked in order to defraud her, defendants' clients and defendants' employee. These allegations are untrue. While the plaintiff attempted to wrongfully use a false criminal complaint in support of her civil case, no charges have been brought against any defendant, although that investigation was caused by the plaintiff to commence over 18 months ago. The defendants are considering bringing counterclaim for malicious prosecution, defamation and abuse of process. All weights of metals recovered on plaintiff's accounts were done accurately and properly and plaintiff was paid in full for those accounts. The plaintiff is upon information and belief, bringing this action in bad faith as the plaintiff left the employ of the defendant to work for the defendants' competitor. In addition the plaintiff is misstating the agreed upon methodology for determining compensation to the plaintiff and/or the customer. Defendants deny that they owe plaintiff any money and contend that each of plaintiff's claims are without merit.

3. JOINT PROPOSED DISCOVERY PLAN

- a. Initial Disclosures: **January 6, 2006.**
- b. Discovery Cut-off: **April 1, 2006.**
No more than thirty (30) interrogatories per side.
Plaintiff requests that there be no more than fifty (50) requests for production of documents per side.
Defendants request that there be no more than (30) requests for production of documents per side.

c. Deposition Deadlines:

i. Fact Witnesses: **July 1, 2006.**
No more than ten (10) depositions per side
without court approval.

ii. Expert Witnesses **August 15, 2006**

3. PROPOSED SCHEDULE FOR FILING MOTIONS

Dispositive Motion Deadline: **September 15, 2006.**

4. CERTIFICATIONS SIGNED BY COUNSEL AND PARTIES

The Plaintiff and her counsel hereby affirm that they have conferred and discussed:

- a. the establishment of a budget for the costs of conducting the full course litigation and for various alternatives; and
- b. considering the resolution of litigation through the use of an alternative dispute resolution program.

Defendants and their counsel hereby certify that counsel and an authorized representative of the defendants have conferred and discussed:

- a. establishing a budget for the cost of conducting the full course-and various alternative courses-of the litigation;
- b. considering the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in Local Rule 16.4.

5. ADDITIONAL MATTERS

The Plaintiff does not consent to the exercise of jurisdiction of a magistrate judge.

RESPECTFULLY SUBMITTED,

/s/ Gregory J. Aceto

Gregory J. Aceto

Erin J. Brennan

Johnson & Aceto, P.C.

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